the same track was also standing another car destined for Farnham, the next station east. At Silver Creek this wayfreight had orders to leave a couple of cars and to take on the car going to Farnham. The car loaded with iron above referred to was defective. The draw bar, the draft timber and the coupling apparatus on the westerly end of this car were gone. This car had been on the siding at Silver Creek several days loaded with iron consigned to a firm at Silver Creek, waiting to be unloaded. Its condition was known to the crew of the wayfreight generally and to the plaintiff's intestate prior to the accident. In fact its crippled conditon was the subject of conversations between him and the train conductor only shortly before the accident happened. In getting out the car for Farnham the engine went onto the siding from the westerly end, pulled out a string of six cars including the Farnham car, then shunted the Farnham car onto an adjoining track, placed two of the other cars they had hauled out onto a third track, and then kicked the other three cars back onto the track where the crippled car stood. Plaintiff's intestate was on one of these three cars for the purpose of setting the brakes and so placing them on this siding so as not to come into contact with the crippled car. He evidently was at the brake on the easterly end of the easterly one of the three cars moving toward the crippled car. His foot was resting on the small platform at the end of the car just below the brake wheel. For some reason he did not stop the three cars moving on this track before the cars came into contact with the crippled car. The cars collided, and owing to the absence of coupler attachment and bumpers on the crippled car intestate's leg was caught between the ends of the two cars and he was so injured that he died from the injuries so received. It evidently was not the intention of any of the crew to disturb, couple onto, or move the crippled car."

The statement that "owing to the absence of the coupler attachment and bumpers on the crippled car intestate's leg was caught between the ends of the two cars" is disputed as a consequence or as element of decision independently of what Lang was to do and did—indeed it is the dispute in the case. Based on it, however, and the facts recited the contention of petitioner is that they demonstrate a violation of the Safety Appliance Act and justify the judgment of the trial court and its affirmance by the Appellate

Division. For this *Louisville & Nashville R. R. Co.* v. *Layton*, 243 U. S. 617 is cited.

The opposing contention of respondent is that "The proximate cause of the accident was the failure of the deceased to stop the cars before they came in collision with the defective car. The absence of the coupler and draw bar was not the proximate cause of the injury, nor was it a concurring cause." To support the contention *St. Louis & S. F. R. R. Co.* v. *Conarty*, 238 U. S. 243 is adduced.

The Court of Appeals considered the *Conarty* case controlling. This petitioner contests, and opposes to it the *Layton* case *supra*, and contends that the Court failed to give significance and effect to the fact that the car in the *Conarty* case was out of use and that while out of use the car upon which Conarty was riding collided with it; whereas in the case at bar, it is insisted, that the defective car was in use by defendant and was required to be used by the intestate. The trial court made this distinction and expressed the view that the defective car in the case at bar "must be deemed to have been in use within the meaning of the statute." The distinction as we shall presently see is not justified. It is insisted upon, however, and to what is considered its determination is added a citation from the *Layton* case declaring that the Safety Appliance Act makes "it unlawful for any carrier engaged in interstate commerce to use on its railroad any car not" equipped as there provided. And further, "By this legislation the qualified duty of the common carrier is expanded into an absolute duty in respect to car couplers" and by an omission of the duty the carrier incurs "a liability to make compensation to any employee who" is "injured by it." But necessarily there must be a causal relation between the fact of delinquency and the fact of injury and so the case declares. Its concluding words are, expressing the condition of liability, "that carriers are liable to employees in damages whenever the failure to obey these Safety Appliance laws is the proximate cause of injury to them when engaged in the discharge of duty." The plaintiff recovered because the case came, it was said, within that interpretation of the statute.

We need not comment further upon the case nor consider the cases which it cites. There is no doubt of the duty of a carrier

under the statute and its imperative requirement or of the consequences of its omission. But the inquiry necessarily occurs, to what situation and when, and to what employees do they apply?

The Court of Appeals was of the view that it was the declaration of the *Conarty* case that § 2* of the Safety Appliance Act "was intended to provide against the risk of coupling and uncoupling and to obviate the necessity of men going between the ends of cars. It was not to provide a place of safety between colliding cars" and that "the absence of coupler and draw bar was not a breach of duty toward a servant in that situation." It further decided that Lang was in "that situation" and he "was not one of the persons for whose benefit the Safety Appliance Act was passed."

Two questions are hence presented for solution. (1) Was the Court of Appeals' estimate of the *Conarty* case correct? (2) Was it properly applied to Lang's situation?

(1) The Court's conclusion that the requirement of the Safety Appliance Act "was intended to provide against the risk of coupling cars", is the explicit declaration of the *Conarty* case. There, after considering the Act and the cases in exposition of it, we said, nothing in its provisions "gives any warrant for saying that they are intended to provide a place of safety between colliding cars. On the contrary, they affirmatively show that a principal purpose in their enactment was to obviate 'the necessity for men going between the ends of the cars. 27 Stat. 531.' "

The case was concerned with a collision between a switch engine and a defective freight car resulting in injuries from which death ensued. The freight car was about to be placed on (we quote from the opinion) "an isolated track for repairs and was left near the switch leading to that track while other cars were being moved out of the way—a task taking about five minutes. At that time a switch engine with which the deceased was working came along the track on which the car was standing and the collision ensued." The deceased was on the switch engine and it was on its way

*§ 2 of the Safety Appliance Act is as follows: "On and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier [one engaged in interstate commerce] to haul or permit to be hauled or used in its line, any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars." 27 Stat. 531.

"to do some switching at a point some distance beyond the car and was not intended and did not attempt to couple it to the engine or to handle it in any way. Its movement was in the hands of others."

(2) That case, therefore, declares the same principle of decision as the Court of Appeals declared in this, and, while there is some difference in the facts, the difference does not exclude the principle. In neither case was the movement of the colliding car directed to a movement of the defective car. In that case the movement of the colliding car was at night, and it may be inferred that there was no knowledge of the situation of the defective car. In this case the movement of the colliding car was in the day time and the situation of the defective car was not only known and visible, but its defect was known by Lang. He, therefore, knew that his attention and efforts were to be directed to prevent contact with it. He had no other concern with it than to avoid it. "It was not", the trial court said, "the intention of any of the crew [of the colliding car] to disturb, couple onto, or move the crippled car." It was the duty of the crew, we repeat, and immediately the duty of Lang, to stop the colliding car and to set the brakes upon it "so as not to come into contact with the crippled car", to quote again from the trial court. That duty he failed to perform, and, if it may be said, that notwithstanding he would not have been injured if the car collided with had been equipped with draw bar and coupler, we answer, as the Court of Appeals answered, "still the collision was not the proximate result of the defect." Or, in other words, and as expressed in effect in the *Conarty* case, that the collision under the evidence cannot be attributable to a violation of the provisions of the law "but only had they been complied with, it [the collision] would not have resulted in the injury to the deceased."

Judgment affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.